

Docket No. 58954.US/1498.5

REMARKS

Claims 1-21 are in the application. In the Office Action, the title was objected to for not being descriptive. Claims 1-3, 6, 13-15, and 20-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,305,367 to Kotsopoulos et al. in view of U.S. publication No. 2001/0045779 to Lee et al. Claims 4-5, 7-12, and 16-19 were objected to as being dependent on a rejected base claim, but were said to be allowable. The rejections are respectfully traversed.

By the foregoing amendment, the title of the application was changed and is believed to be more descriptive of the invention. Accordingly, it is respectfully requested that the objection to the title be reconsidered and withdrawn.

Claims 1 and 20 are amended to more clearly and distinctly claim the invention. Support for the amendment to claims 1 and 20 can be found in the specification on page 6, lines 4-6 and lines 15-17. No new matter is introduced into the case by the amendment.

Claims 1-3, 6, 13-15, and 20-21 are Patentably Distinguished Over the Cited References.

The invention relates to a unique power system for a projectile launcher. The power system may be located on a projectile hopper or launcher or remote from this device such as on a belt of a user. As set forth in the specification, the system enables additional play time once a primary power source is depleted of energy.

In the Office Action, the '367 patent to Kotsopoulos et al. is cited as the primary reference. The '367 patent relates to a jam prevention system for a paintball gun. Only a single power source is suggested and disclosed in the '367 patent. There is nothing in the '367 patent with regard to providing an alternative, backup power source, or additional power source. There is also nothing in the '367 patent with regard to providing an alternating current (AC) power source as provided in the '779 application. Accordingly, there is no motivation in the '367 patent to combine the '367 patent with the '779 application.

The '779 application relates to a primary AC power source and one or more backup battery power sources. The system described in the '779 patent is said to be suitable for devices such as computers, TVs, etc. There is absolutely nothing in the '779 application with regard to paintball hopper feeder such as described in the '367 patent. There is also nothing in the '779 application with regard to providing a system that could be used with the paintball hopper feeder of the '367 patent. As shown and

Docket No. 58954.US/1498.5

described in the '779 patent, the primary power source is an AC power source, whereas the primary power source for the paintball hopper feeder in the '367 patent is a DC storage battery. The examiner has not explained or shown how the references provide motivation to make the combination suggested by the examiner. Also, the examiner has failed to point to any teaching or suggestion in the references that would provide direction to make the modifications to the '367 patent to provide the claimed invention. The only motivation to combine the references, if in fact they can be combined to provide the claimed invention, comes from applicant's disclosure and not from the cited references.

It is clear that there must be more than simply itemizing the elements in the prior art and combining the elements to provide Applicants' invention. As the court stated in *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983), "... virtually all [inventions] are combinations of old elements." Identification of the elements in the prior art is not sufficient, however, to negate patentability, otherwise few patents would ever issue.

"To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 47 USPQ2d 1453, 1457, 1458 (Fed. Cir. 1998).

The Examiner has merely "shopped" the references to find isolated elements of the claimed invention and has combined those elements as taught by the claimed invention. This is an improper hindsight reconstruction of the invention. There is no motivation in the references to select the backup power system of the '779 patent and combine such system with the hopper feeder of the '367 patent to provide all of the features and advantages of the claimed invention. Without the required motivation in the references to make the combination, the rejection of Claims 1-3, 6, 13-15, and 20-21 is untenable and should be withdrawn.

In the alternative, applicant submits that the combined references fail to provide all of the features and advantages of the claimed invention. If the '779 application is combined with the '367 patent, the system will include an AC power

Docket No. 58954.US/1498.5

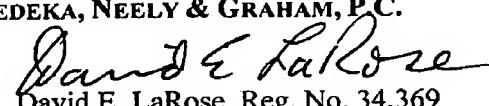
source connected to the hopper feeder. However, applicant's system does not require an AC power source as a primary or secondary power source. Accordingly, the combined references fail to provide the claimed invention.

Applicant hereby encloses a Petition for Extension of Time and requests that the fee in the amount of \$225.00 to cover the cost for the extension of time be charged to our Deposit Account 12-2355. If other fees are required by this amendment, such as fees for additional claims, such fees may be charged to Deposit Account 12-2355. Should the examiner require further clarification of the invention, it is requested that he contact the undersigned before issuing the next Office Action.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By:

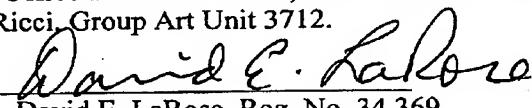

David E. LaRose, Reg. No. 34,369

December 30, 2004
P.O. Box 1871
Knoxville TN 37901
Phone (865) 546-4305

* * * CERTIFICATE OF FACSIMILE TRANSMISSION* * *

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office at 703-872-9306, Attn: Examiner John A. Ricci, Group Art Unit 3712.

Date: December 30, 2004


David E. LaRose, Reg. No. 34,369